

REMARKS

The present Amendment is in response to the Office Action mailed January 24, 2008. A Petition for a three-month extension of the term for response to said Office Action, to and including July 24, 2008 is transmitted herewith.

Claims 1-20 were rejected in the Action. Claims 2 and 19 have been cancelled herein. No claims have been amended or added herein. Therefore, claims 1, 3-18, and 20 are pending in the present application. As such, no new matter has been added. Applicants set forth remarks relating to the Office Action below.

Applicants would like to inform the Examiner of the related cases that are being examined by a different Examiner in the Patent Office. Among others, Application Nos. 10/663,487 and 10/663,493 having client docket Nos. SPINE 3.0-437 CPCPCPCPCPCPCP I CON II and SPINE 3.0-437 CPCPCPCPCPCPCP I CON I respectively are being examined by Examiner Brian E. Pellegrino in Group Art Unit 3783. Applicants will furnish any documents pertaining to these related cases upon request of the present Examiner.

In the Action, the Examiner objected to claims 1-20 asserting he is confused as to whether Applicants are claiming a sub-combination or a combination in the claims. Specifically, the Examiner asserted that dependent claims 2 and 19 further define the orthopedic device as one of an artificial intervertebral disc, a static trial, and a distraction spacer, and as such make the scope of independent claims 1 and 12 unclear. Applicants have cancelled claims 2 and 19 in order to clarify that the pending claims are only directed to the sub-combination of an apparatus, and Applicants hereby indicate that the present application is indeed directed to the sub-combination. In light of the foregoing, Applicants assert that

the current objections to claims 1-20 are overcome and the objections to the claims should be withdrawn.

Further in the Action, the Examiner rejected claims 1-3, 5-15, 19, and 20 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,518,205 to Kountz ("*Kountz*"), claim 4 under 35 U.S.C. 103(a) as being obvious in view of *Kountz*, and claims 16-18 under 35 U.S.C. 103(a) as being obvious over the combination of *Kountz* and U.S. Patent No. 3,743,042 to Hilterhaus ("*Hilterhaus*"). With respect to the 102(b) rejection, the Examiner is of the opinion that Figure 2 of *Kountz* teaches each and every limitation included in claims 1-3, 5-15, 19, and 20. Applicants strongly disagree with the Examiner's application of the *Kountz* reference.

*Kountz* is directed to an improved fishing rod handle that includes at one end thereof a weighing scale. The scale includes a scale bar 34 having a hooked end 35 attached to a spring 31 that is hung on a locking rod 30 fixed inside a longitudinal shaft of the handle. In a rest position, hooked end 35 is separated from the end of shaft 20, and hooked end 35 is entirely retracted within shaft 20 under the bias of spring 21 when covered 22 is closed. The function of the weighing scale is to hold and weigh a fish attached to hooked end 35.

In contrast, the object of the present invention is for the downwardly bent holding pin to engage an engagement hole of an intervertebral device and pull the device such that the intervertebral device is held against the distal end of the apparatus. The bent configuration of the distal end of the holding pin of the present invention thusly serves two purposes, (1) to engage the intervertebral device, and (2) to prevent the holding pin from being retracted within the shaft of the apparatus under the bias of the spring. Both of these

limitations are recited in certain of the pending claims, including independent claim 12.

The device of *Kountz* is simply not designed for the engagement of an intervertebral device. Further, what the Examiner refers to as a bent holding pin in the reference is not bent so as to prevent the pin from being retracted with the shaft of the apparatus, as required by claim 12. Rather, hook 35 of *Kountz* is covered by the shaft when cover 22 is closed, and would be disposed entirely in shaft 20 if spring 21 were shorter.

For the foregoing reasons, Applicants assert independent claim 12 is not anticipated by *Kountz*. Clearly *Kountz* is a different invention than the present invention. Therefore, independent claim 12 is allowable over *Kountz* alone or in combination with *Hilterhaus*, which does not cure the deficiencies of *Kountz*. Claims 13-18 and 20 depending from independent claim 12 are also allowable over the cited references for at least the same reasons as provided with respect to independent claim 12.

With respect to claim 1, *Kountz* does not disclose or teach "the shaft distal end further having forward surfaces for engagement with corresponding confronting surfaces of at least one of the baseplates for axial rotationally aligning the at least one of the baseplates with respect to the longitudinal axis in at least two of a plurality of possible axial rotationally aligned positions." Surfaces near element 21 in *Kountz* are not structured to provide axial rotational alignment of the apparatus with an orthopedic device in a plurality of different axial rotational aligned positions, as is asserted by the Examiner. The specification of *Kountz* describes element 21 as a slot and the surfaces near element 21 are flat surfaces on either side of slot 21, wherein each surface is perpendicular to

a longitudinal axis of slot 21. These surfaces that are not even referenced anywhere in the specification of *Kountz* could only axial rotational align a member to the longitudinal axis of the fishing rod in one position, namely perpendicular to the longitudinal axis of the rod.

For the foregoing reasons, independent claim 1 is not anticipated by *Kountz* and should be in condition for allowance. Claims 3-11 depending from claim 1 should also be in condition for allowance for at least the same reasons provided with respect to independent claim 1.

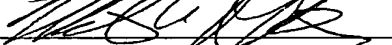
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: July 24, 2008

Respectfully submitted,

By   
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